MONTANA LEGISLATIVE HISTORY

Chapter 582 1989

Bill H _____ (S) 331 Original bill & history ___C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 08	✓ C	Hearing Date(s)	Feb 10	✓ C
	Mar 09	✓ C		Feb 11	✓ C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	Mar 09	✓ C		Feb 11	✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

3/21	FREE CONFERENCE COMMITTEE REPORT NO. 1		
3/30	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	50	0
4/01	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	47	0
	HOUSE		
3/22	FREE CONFERENCE COMMITTEE APPOINTED		
4/06	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/10	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	92	2
4/11	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	97	0
4/15	SIGNED BY PRESIDENT		
4/17	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
4/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 620 EFFECTIVE DATE: 10/01/89		

SB 331 INTRODUCED BY BISHOP
GENERALLY REVISE THE UNIFORM PROBATE CODE AND RELATED LAW

2/03	INTRODUCED		
2/03	REFERRED TO JUDICIARY		
2/10	HEARING		
2/13	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/17	2ND READING PASSED	42	0
2/20	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/21	REFERRED TO JUDICIARY		
3/08	HEARING		
3/10	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/14	2ND READING CONCURRED	80	3
3/16	3RD READING CONCURRED	94	1
	RETURNED TO SENATE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	48	0
4/04	3RD READING AMENDMENTS CONCURRED	49	0
4/11	SIGNED BY PRESIDENT		
4/17	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 582 EFFECTIVE DATE: 10/01/89		

SB 332 INTRODUCED BY MANNING, ET AL.
CHANGE LOCAL BONDING DEFINITION--ESTABLISH TERM OF BOND ISSUE

2/03	INTRODUCED		
2/03	REFERRED TO LOCAL GOVERNMENT		
2/09	HEARING		
2/10	COMMITTEE REPORT--BILL PASSED		
2/14	2ND READING PASSED	47	0
2/16	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		

INTRODUCED BY Senate BILL NO. 331

Bishop

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE UNIFORM PROBATE CODE AND RELATED LAW; REQUIRING A 120-HOUR SURVIVORSHIP TO COLLECT INSURANCE PROCEEDS; AND AMENDING SECTIONS 40-8-125, 72-1-108, 72-2-104, 72-2-202, 72-2-305, 72-2-516, 72-2-517, 72-2-704, 72-3-122, 72-3-213, 72-3-603, 72-3-607, 72-3-805, 72-3-902, 72-3-917, 72-3-1103, 72-3-1104, 72-5-302 THROUGH 72-5-304, 72-5-325, 72-5-435, 72-5-438, 72-5-501, 72-16-301 THROUGH 72-16-303, AND 72-16-906, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-8-125, MCA, is amended to read:

"40-8-125. Effect of final decree. (1) After the final decree of adoption is entered, the relation of parent and child and all the rights, duties, and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child and the kindred of the adoptive parents. ~~From the date of the final decree of adoption, the child shall be entitled to inherit real and personal property from and through the adoptive parents and the kindred of the adoptive parents in accordance with the statutes of descent and distribution and the adoptive parents and their kindred shall be entitled to inherit real and personal property from and through the child in accordance with said statutes.~~

(2) After a the final decree of adoption is entered, the natural parents and the kindred of the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved of all parental responsibilities for said child and have no rights over such adopted child ~~or to his property by descent and distribution~~.

(3) The relationship of parent and child for the purposes of intestate succession is governed by Title 72."

Section 2. Section 72-1-108, MCA, is amended to read:

"72-1-108. Evidential rules applicable -- evidence as to death or status. (1) In proceedings under this code the rules of evidence in courts of general jurisdiction, including any relating to simultaneous deaths, are applicable unless specifically displaced by the code.

(2) In addition, the following rules relating to determination of death and status are applicable:

(a) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date, and time of death and

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the identity of the decedent.

(b) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(c) In the absence of prima facie evidence of death under subsection (2)(a) or (2)(b), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

~~(c)~~(d) A person whose death is not established under subsections (2)(a) through (2)(c), who is absent for a continuous period of ~~7~~ 5 years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier."

Section 3. Section 72-2-104, MCA, is amended to read:

"**72-2-104. Homicide -- effect on intestate succession, wills, joint assets, life insurance, and beneficiary designations.** (1) A surviving spouse, heir, or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this chapter, and the estate of the decedent passes as if the

killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(2) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(4) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

(5) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and

intentional killing, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

(6) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

(7) For the purposes of this section, a felonious and intentional killing includes a deliberate homicide as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103."

Section 4. Section 72-2-202, MCA, is amended to read:

"72-2-202. Share of spouse. The intestate share of the surviving spouse is:

(1) if there is no surviving issue or if there are surviving issue all of whom are issue of the surviving spouse also, the entire remaining estate;

(2) if there are surviving issue one or more of whom

are not issue of the surviving spouse, as follows:

(a) if there is surviving only one ~~such~~ child or the issue of one ~~such~~ child, one-half of the intestate estate;

(b) if there are surviving ~~more-than-one-such-child-or one-such-child~~ two or more children, the issue of two or more deceased children, or one or more children and the issue of one or more deceased children, one-third of the intestate estate."

Section 5. Section 72-2-305, MCA, is amended to read:

"72-2-305. Who may witness -- effect of witness by beneficiary. (1) Any person generally competent to be a witness may act as a witness to a will.

(2) A will is not invalid because the will is signed by an interested witness.

~~(3)--All--beneficial--devises--made--in--any--will-to-a subscribing-witness-thereto-are-void-unless--there--are--two other--competent--subscribing--witnesses--to-the-same,-but-a mere-charge-on-the-estate-of-the-testator-does--not--prevent his-creditors-from-being-competent-witnesses-to-his-will.~~

~~(4)--If--a--witness--to-whom-any-beneficial-devise-void under-subsection-(3)-is-made-would-have-been-entitled-to-any share-of-the-estate-of-the-testator-if-the-testator-had-died intestate,-such-witness-succeeds-to-so-much-of-the-share--as would--be-distributed-to-him-under-intestate-succession,-not exceeding-the-devise-or-bequest-made-to-him-in-the-will.~~"

Section 6. Section 72-2-516, MCA, is amended to read:

"72-2-516. **Nonademption of specific devises in certain cases.** ~~(1)--If--specifically--devised-property-is-sold-by-a conservator-or-if-a-condemnation-award-or-insurance-proceeds are-paid-to-a-conservator-as-a-result-of-condemnation,-fire, or-casualty,--the--specific--devisee--has--the--right--to--a pecuniary--devise--equal--to--so--much--of--the--sale-price, condemnation-award,-or-insurance-proceeds-as-remains-in--the estate--and--is--identifiable--at-the-time-of-the-decedent's death.-This-subsection-does-not-apply-if-subsequent--to--the sale,--condemnation,--or-casualty-it-is-adjudicated-that-the disability-of-the--testator--has--ceased--and--the--testator survives--the--adjudication--by--1--year.---The-right-of-the specific-devisee-under-this-subsection--is--reduced--by--any right-he-has-under-subsection-(2).~~

~~(2)~~(1) A specific devisee has the right to the remaining specifically devised property and:

(a) any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property;

(b) any amount of a condemnation award for the taking of the property unpaid at death;

(c) any proceeds unpaid at death on fire or casualty insurance on the property; and

(d) property owned by testator at his death, as a

result of foreclosure or obtained in lieu of foreclosure of the security for a specifically devised obligation.

(2) If specifically devised property is sold by a conservator or an agent acting within the authority of a durable power of attorney for a principal who is under a disability, or if a condemnation award or insurance proceeds are paid to a conservator or an agent acting within the authority of a durable power of attorney for a principal who is under a disability, as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if after the sale, condemnation, or casualty it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by 1 year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (1)."

Section 7. Section 72-2-517, MCA, is amended to read:

"72-2-517. **Changes in devised securities -- distributions prior to death.** (1) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(a) as much of the devised securities as is a part of

the estate at time of the testator's death;

(b) any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity, excluding any securities acquired by exercise of purchase options;

(c) securities of another entity owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity; and

(d) any additional securities of the entity owned by the testator as a result of a plan of reinvestment ~~if it is a regulated investment company~~.

(2) Distributions prior to death with respect to a specifically devised security not provided for in subsection (1) are not part of the specific devise."

Section 8. Section 72-2-704, MCA, is amended to read:

"72-2-704. ~~Effect of election on benefits by will or statute~~ Surviving spouse -- allowance -- exemptions. ~~(1) The surviving spouse's election of his elective share does not affect the share of the surviving spouse under the provisions of the decedent's will or intestate succession unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions. If any provision is so renounced, the property or other benefit which would otherwise have passed to the surviving spouse thereunder is treated, subject to~~

~~contribution under 72-2-706(2), as if the surviving spouse had predeceased the testator.~~

~~(2)~~ A surviving spouse is entitled to homestead allowance, exempt property, and family allowance whether or not he elects to take an elective share."

Section 9. Section 72-3-122, MCA, is amended to read:

"72-3-122. **Time limit on probate, testacy, and appointment proceedings -- exceptions.** (1) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent's death, except:

(a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed at any time within 3 years

after the conservator becomes able to establish the death of the protected person; and

(c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death; and

(d) if no proceeding concerning the succession or administration of the estate has occurred within 3 years after the decedent's death, a formal testacy proceeding may be commenced at any time thereafter for the sole purpose of establishing a devise of property which the devisee or his successors and assigns possessed in accordance with the will or property which was not possessed or claimed by anyone by virtue of the decedent's title during the 3-year period, and the order of the court must be limited to that property.

(2) These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate, ~~nor do they limit the right of interested persons to commence informal probate or appointment proceedings or formal testacy or appointment proceedings at any time after 3 years from the decedent's death if there have been no previous formal or informal probate or appointment proceedings commenced in respect of that decedent.~~

(3) In cases under (1)(a) or (1)(b) above, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death."

Section 10. Section 72-3-213, MCA, is amended to read:

"**72-3-213. Rules for grant or denial of informal probate.** (1) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under 72-2-302, 72-2-303, or 72-2-306 have been met shall be probated without further proof. In other cases the clerk may assume execution if the will appears to be properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(2) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (3) below, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the

statement probating it from the office or court where it was first probated.

(4) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under 72-3-212 may be probated in this state upon receipt by the clerk of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

(5) Application for informal probate which relates to one or more of a known series of testamentary instruments (other than ~~wills and codicils~~ a will and one or more codicils to the will), the latest of which does not expressly revoke the earlier, shall be declined."

Section 11. Section 72-3-603, MCA, is amended to read:

"72-3-603. Notice of appointment to heirs and devisees. (1) Not later than 30 days after his appointment, every personal representative, except any special administrator, shall give information of his appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail

to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate.

(2) (a) The information ~~shall~~ must:

~~(a)~~(i) include the name and address of the personal representative;

~~(b)~~(ii) indicate that it is being sent to persons who have or may have some interest in the estate being administered;

~~(c)~~(iii) indicate whether bond has been filed; and

~~(d)~~(iv) describe the court where papers relating to the estate are on file.

(b) The information must state that the estate is being administered by the personal representative under the uniform probate code without supervision by the court but that recipients are entitled to information regarding the administration from the personal representative and may petition the court in any matter relating to the estate, including distribution of assets and expenses of administration.

(3) The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his

powers, or other duties.

(4) A personal representative may inform other persons of his appointment by delivery or ordinary first-class mail."

Section 12. Section 72-3-607, MCA, is amended to read:

"72-3-607. Inventory -- appraisal -- copy to department of revenue. (1) Within ~~3--months--after--his appointment~~ the time required for the filing of a United States estate tax return plus any extensions granted by the internal revenue service, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory, which inventory shall include listing of all property which:

(a) the decedent owned, had an interest in or control over, individually, in common, or jointly, or otherwise had at the time of his death;

(b) the decedent had possessory or dispository rights over at the time of his death or had disposed of for less than its fair market value within 3 years of his death; or

(c) was affected by the decedent's death for the purpose of inheritance or estate taxes.

(2) The inventory shall include a statement of the full and true value of the decedent's interest in every item listed in such inventory. In this connection the personal

representative shall appoint one or more qualified and disinterested persons to assist him in ascertaining the fair market value as of the date of the decedent's death of all assets included in the estate. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

(3) The personal representative shall send a copy of the inventory to interested persons who request it, or he may file the original of the inventory with the court. In any event, a copy of the inventory and statement of value shall be mailed to the department of revenue."

Section 13. Section 72-3-805, MCA, is amended to read:

"72-3-805. Allowance and disallowance of claims -- interest on allowed claims. (1) As to claims presented in the manner described in 72-3-804 within the time limit prescribed in 72-3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run

and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of ~~disallowance~~ allowance.

(2) After allowing or disallowing a claim, the personal representative may change the allowance or disallowance as provided in this section. The personal representative may change the allowance to a disallowance, in whole or in part, prior to payment, but not after allowance by a court order or judgment or an order directing payment of the claim. The personal representative shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subsection (1). The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred under subsection (1). After it is barred, it may be allowed and paid only if the estate is solvent and all

successors whose interests would be affected consent.

~~(2)~~(3) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow, in whole or in part, any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (1) ~~of this section~~. Notice in this proceeding shall be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

~~(3)~~(4) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

~~(4)~~(5) Unless otherwise provided in any judgment in another court entered against the personal representative, an allowed ~~claims--bear~~ claim bears interest at the legal rate for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case ~~they bear~~ the claim bears interest in accordance with that provision."

Section 14. Section 72-3-902, MCA, is amended to read:

"**72-3-902. Distribution in kind preferred -- method -- valuation.** Unless a contrary intention is indicated by the

will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(1) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in 72-2-802 shall receive the items selected.

(2) Any homestead or family allowance or devise ~~payable in~~ of a stated sum of money may be satisfied ~~by value~~ in kind, provided:

(a) the person entitled to the payment has not demanded payment in cash;

(b) the property distributed in kind is valued at fair market value as of the date of its distribution; and

(c) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(3) For the purpose of valuation under subsection (2), ~~securities~~ any security regularly traded on a recognized ~~exchanges~~ exchange, if distributed in kind, ~~are~~ is valued at the price for the last sale of like securities traded on the business day prior to distribution or, if there was no sale on that day, at the median between amounts bid and ~~offered~~ asked at the close of that day. ~~Assets~~ An asset consisting of ~~sums~~ a sum owed the decedent or the estate by a solvent ~~debtors~~ debtor as to which there is no known dispute or

defense ~~are~~ is valued at the sum due with accrued interest or discounted to the date of distribution. For ~~assets~~ an asset which ~~do not have~~ has no readily ascertainable ~~values~~ value, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of ~~the assets~~ any asset as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the ~~assets~~ asset may have been previously appraised.

(4) The residuary estate shall be distributed in ~~kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution~~ any equitable manner."

Section 15. Section 72-3-917, MCA, is amended to read:

"72-3-917. Distribution to person under disability. (1) A personal representative may discharge his obligation to distribute to any person under legal disability by distributing ~~to his conservator or any other person authorized by this code or otherwise to give a valid receipt and discharge for the distribution~~ in a manner expressly provided in the will.

(2) Unless contrary to an express provision in the

will, the personal representative may discharge his obligation to distribute to a minor or person under other disability as authorized by 72-5-501 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

(3) (a) If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:

(i) an attorney-in-fact who has authority under a power of attorney to receive property for that person; or

(ii) the spouse, parent, or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding $10,000 a year or property not exceeding $10,000 in value, unless the court authorizes a larger amount or greater value.

(b) Any person receiving money or property for the disabled person is obligated to apply the money or property to the support of that person, but may not pay himself except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or

property distributed pursuant to this subsection (3)."

Section 16. Section 72-3-1103, MCA, is amended to read:

"**72-3-1103. Summary procedure for disbursement and distribution.** If it appears from the inventory and appraisal that the value of the ~~net--distributable--estate--does--not exceed--$7,500-or-the-value-of-the~~ entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to the creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in 72-3-1104."

Section 17. Section 72-3-1104, MCA, is amended to read:

"**72-3-1104. Closing by sworn statement of personal representative -- termination of appointment.** (1) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of 72-3-1103 by filing with the court, at any time after disbursement and distribution of

the estate, a verified statement stating that:

(a) to the best knowledge of the personal representative, ~~the--value--of-the-net-distributable-estate did-not-exceed-$7,500-or~~ the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

(b) the personal representative has fully administered the estate by payment of inheritance taxes and by disbursing and distributing it to the persons entitled thereto; and

(c) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(2) If no actions or proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.

(3) A closing statement filed under this section has the same effect as one filed under 72-3-1004."

Section 18. Section 72-5-302, MCA, is amended to read:

"**72-5-302. Testamentary appointment of guardian for incapacitated person -- when effective -- priorities.** (1) The parent of an unmarried incapacitated person may appoint by will ~~appoint~~ or other writing signed by the parent and attested by at least two witnesses a guardian of the incapacitated person. ~~A--testamentary~~ If both parents are dead or the surviving parent is adjudged incapacitated, a parental appointment ~~by--a--parent~~ becomes effective when, after having given 7 days' prior written notice of ~~his~~ intention to do so to the incapacitated person and to the person having ~~his~~ care of the person or to ~~his~~ the nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, ~~if-prior-thereto-both--parents--are--dead--or--the surviving--parent-is-adjudged-incapacitated,~~ or, in the case of a nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court, as provided by 72-5-304. If both parents are dead, an effective appointment by the parent who died later has priority ~~unless it--is--terminated--by--the--denial--of--probate--in--formal proceedings~~.

(2) The spouse of a married incapacitated person may appoint by will ~~appoint~~ or other writing signed by the

spouse and attested by at least two witnesses a guardian of the incapacitated person. The appointment becomes effective when, after having given 7 days' prior written notice of ~~his~~ intention to do so to the incapacitated person and to the person having ~~his~~ care of the incapacitated person or to ~~his~~ the nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated~~.~~ or, in the case of nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court, as provided by 72-5-304. An effective appointment by a spouse has priority over an appointment by a parent ~~unless it is terminated by the denial of probate in formal proceedings~~."

Section 19. Section 72-5-303, MCA, is amended to read:

"**72-5-303. Recognition of appointment of guardian by foreign will.** ~~This state shall recognize a testamentary~~ An appointment effected by filing the guardian's acceptance under a will probated ~~at the testator's~~ in the state of the decedent's domicile ~~in another state~~ is effective in this state."

Section 20. Section 72-5-304, MCA, is amended to read:

"**72-5-304. Objection by alleged incapacitated person to testamentary appointment.** ~~On~~ Upon the filing ~~with~~ in the

court in which the will was probated or, in the case of a nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present, of written objection to the appointment by the incapacitated person for whom a ~~testamentary~~ parental or spousal appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the ~~testamentary~~ parental or spousal nominee or any other suitable person upon an adjudication of incapacity in proceedings under ~~this part~~ 72-5-305 through 72-5-325."

Section 21. Section 72-5-325, MCA, is amended to read:

"**72-5-325. Petition for removal or resignation of guardian -- termination of incapacity.** (1) On petition of the ward or any person interested in ~~his~~ the ward's welfare, the court, after hearing, may remove a guardian ~~and appoint a successor~~ if in the best interests of the ward. On petition of the guardian, the court, after hearing, may accept ~~his~~ a resignation ~~and make any other order which may be appropriate~~.

(2) An order adjudicating incapacity may specify a minimum period, not exceeding ~~1 year~~ 6 months, during which ~~no~~ a petition for an adjudication that the ward is no longer incapacitated may not be filed without special leave. Subject to ~~this~~ that restriction, the ward or any person

interested in ~~his~~ the welfare of the ward may petition for an order that ~~he~~ the ward is no longer incapacitated and for ~~removal---or---resignation~~ termination of the ~~guardian~~ guardianship. A request for ~~this~~ an order may also be made ~~by-informal-letter~~ informally to the court ~~or-judge~~, and any person who knowingly interferes with transmission of ~~this kind-of~~ the request ~~to-the-court-or-judge~~ may be adjudged guilty of contempt of court.

(3) Before ~~removing--a~~ Upon removal, resignation, or death of the guardian~~,-accepting-the-resignation-of-a~~ or if the guardian~~,--or--ordering--that--a--ward's-incapacity-has terminated~~ is determined to be incapacitated, the court~~,~~ ~~following-the-same-procedures-to-safeguard-the-rights-of-the ward--as--apply-to-a-petition-for-appointment-of-a-guardian,~~ may ~~send-a-visitor-to-the-residence-of-the-present~~ appoint a successor guardian and ~~to-the-place-where-the--ward--resides or--is-detained,-to-observe-conditions-and-report-in-writing to-the-court.~~ make any other appropriate order. Before appointing a successor guardian or ordering that a ward's incapacity has terminated, the court shall follow the same procedures to safeguard the rights of the ward that apply to a petition for appointment of a guardian."

Section 22. Section 72-5-438, MCA, is amended to read:

"72-5-438. Accounts -- final and intermediate. (1) ~~Unless-waived-by-the--court,--every~~ Each conservator must

shall account to the court for ~~his~~ administration of the trust not less than annually ~~for--the--preceding--year--and also~~, unless the court directs otherwise, upon ~~his~~ resignation or removal, and at other times as the court may direct. ~~A--copy--of--the--account--must--be-served-upon-the protected-person's-parent,-guardian,-child,--or--sibling--if that-person-has-made-an-effective-request-under-72-5-404.~~ On termination of the protected person's minority or disability, a conservator ~~may~~ shall account to the court or ~~he--may--account~~ to the ~~former~~ formerly protected person or ~~his-personal-representative~~ the successors of that person.

(2) Subject to appeal or vacation within the time permitted, an order ~~made-upon~~, after notice and hearing, allowing an intermediate account of a conservator adjudicates as to ~~his~~ liabilities concerning the matters considered in connection ~~therewith~~ with the hearing; and an order ~~made-upon~~, following notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or ~~his~~ the protected person's successors relating to the conservatorship.

(3) In connection with any account, the court may require a conservator to submit to a physical check of the estate ~~in-his-control~~, to be made in any manner the court ~~may-specify~~ specifies.

~~(4)--Upon-failure,-as-determined-by-the-clerk-of-court,-of--the--conservator--to--file--an-annual-account,-the-court-shall-order-the-conservator-to-file--the--account--and--give-good-cause-for-his-failure-to-file-a-timely-account.~~"

Section 23. Section 72-5-435, MCA, is amended to read:

"**72-5-435. Persons dealing with conservator -- protection.** (1) A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in 72-5-421 is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in 72-5-430 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator.

(2) The protection ~~here~~ expressed in this section extends to ~~instances---in---which--some~~ any procedural irregularity or jurisdictional defect ~~occurred~~ occurring in proceedings leading to the issuance of letters and is not a substitution for protection provided by comparable provisions of the law relating to commercial transactions or laws simplifying transfers of securities by fiduciaries.

(3) The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries."

Section 24. Section 72-5-501, MCA, is amended to read:

"**72-5-501. When power of attorney not affected by disability.** (1) A durable power of attorney is a power of attorney by which a principal designates another his attorney-in-fact or agent in writing and the writing contains the words, "This power of attorney shall not be affected by subsequent disability or incapacity of the principal or lapse of time" or "This power of attorney shall become effective upon the disability or incapacity of the principal" or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. All acts done by the attorney-in-fact ~~or-agent~~ pursuant to ~~the~~ a durable power of attorney during any period of disability or incapacity ~~or-uncertainty-as-to whether~~ of the principal ~~is-dead--or--alive~~ have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were alive, competent, and not disabled. Unless the instrument

states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.

(2) If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, is accountable to the conservator as well as the principal. The conservator has the same power to revoke or amend the power of attorney that the principal would have had if he were not disabled or incapacitated. A principal may nominate, by a durable power of attorney, the conservator of his estate or guardian of his person for consideration by the court if protective proceedings for the principal's person or estate are ~~thereafter~~ later commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification."

Section 25. Section 72-16-301, MCA, is amended to read:

"72-16-301. Taxable transfers generally -- contemplation of death. (1) A tax shall be and is hereby imposed upon any transfer of property, real, personal, or mixed, or any interest therein or income therefrom in trust or otherwise to any person, association, or corporation in the following cases, except as ~~hereinafter~~ provided in this

section:

~~(1)~~(a) when the transfer is by will or by intestate laws of this state from any person dying possessed of the property while a resident of the state;

~~(2)~~(b) when a transfer is by will or intestate law of property within the state or within its jurisdiction and the decedent was a nonresident of the state at the time of his death; or

~~(3)~~(c) when the transfer is of property made by a resident or by a nonresident when such nonresident's property is within the state or within its jurisdiction by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor or intended to take effect in possession or enjoyment at or after such death. ~~Every~~

(2) No transfer ~~by deed, grant, bargain, sale, or gift~~ made ~~within 3 years prior to the~~ before the 3-year period ending on the date of the decedent's death ~~of the grantor, vendor, or donor of a material part of his estate or in the nature of a final disposition or distribution thereof and without a fair consideration in money or money's worth shall, unless shown to the contrary,~~ be deemed considered to have been made in contemplation of death. ~~within the meaning of this section, but no such transfer by deed, grant, bargain, sale, or gift made before such~~

(3) Every transfer during the 3-year period ~~shall be treated as having been made in contemplation of death. However, nothing herein contained shall be deemed to have modified, amended, or repealed the provisions of 72-16-306.~~ ending on the date of the decedent's death must be considered to have been made in contemplation of death, except:

(a) no transfer shown to be a bona fide sale for an adequate and full consideration in money or money's worth may be considered to be a gift made in contemplation of death;

(b) if the transfer was a gift to a donee made during the calendar year and if the decedent was not required by section 6019 of the internal revenue code to file any gift tax return for the year with respect to the donee, the transfer may not be considered to be a gift made in contemplation of death.

(4) Subsection (3) does not apply to any transfer with respect to a life insurance policy."

Section 26. Section 72-16-302, MCA, is amended to read:

"**72-16-302. Transfer under power of appointment.** ~~Whenever any person or corporation shall exercise a~~ (1) To the extent of any property with respect to which the decedent has at the time of his death a general power of

appointment ~~derived from any disposition of property made either before or after March 5, 1923,~~ such appointment when made property shall be ~~deemed~~ considered to have been transferred in a transfer taxable under the provisions of parts 1 through 8, ~~in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will. Whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of parts 1 through 8 shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.~~ whether or not the decedent exercised the power of appointment.

(2) The term "general power of appointment" means a power that is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate, except that a power to consume, invade, or appropriate property for the benefit of the decedent which is limited by

an ascertainable standard relating to the health, education, support, or maintenance of the decedent may not be considered a general power of appointment."

Section 27. Section 72-16-303, MCA, is amended to read:

"72-16-303. Joint estates -- transfer by right of survivorship taxable. (1) Whenever any property~~,~~ ~~however acquired,--real--or--personal,---tangible---or---intangible, including---government---bonds--of--the--United--States,~~ is ~~inscribed-in-co-ownership-form,~~ held by two or more persons in joint tenancy ~~or--as--tenants--by--the-entirety,-or-is deposited-in-any-bank-or-other-depositary-in-the-joint-names of-two-or-more--persons--and--payable--to--the--survivor--or survivors--of--them-upon-the-death-of-one-of-them~~ with right of survivorship, the right of the survivor or survivors to the immediate possession or ownership is a taxable transfer.

(2) The tax is ~~upon--the--transfer--of--decedent's interest,-one-half-or-other-proper-fraction,-as-evidenced-by the-written-instrument-creating--the--same,--as--though--the property-to-which-the-transfer-relates-belonged-to-the-joint tenants,--tenants-by-the-entirety,-joint-depositors,-holders in-co-ownership-form,-or-persons,-as-tenants-in--common--and had--been,--for--inheritance--tax--purposes,--bequeathed--or devised-to-the-survivor-or-survivors-by--will,--except--such part--thereof-as-may-be-shown-to-have-originally-belonged-to

~~the-survivor-and-never-to-have-belonged-to-the-decedent-when the-surviving-joint-tenant-is--a--spouse--or--issue--of--the decedent.---In--all--other--cases,--the--full--value--of-the property-shall-be-taxable,-except-the-portion--thereof--that originally--belonged--to--the--survivor--and-as-to-which-the decedent-had-made-no-contribution;-if-the-decedent-had--made a--contribution-to-the-ownership-of-the-property,-the-amount of-the-contribution-shall-be-taxable.~~

~~(3)--This-section-shall-not-be-construed-to--repeal--or modify--the-provisions-of-72-16-301(3),~~ on the full value of the property held as joint tenants with right of survivorship, except a part of the property as may be shown to have originally belonged to the survivor or survivors and never to have been received or acquired by the latter from the decedent for less than adequate and full consideration in money or money's worth. When the property or any part of the property, or part of the consideration with which the property was acquired, is shown to have been at any time acquired by the other person from the decedent for less than an adequate and full consideration in money or money's worth, only the part of the value of the property as is proportionate to the consideration furnished by the other person may be excepted. When any property has been acquired by gift, bequest, devise, or inheritance as joint tenants with right of survivorship and their interests are not

otherwise specified or fixed by law, the tax is on the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants with right of survivorship."

Section 28. Section 72-16-906, MCA, is amended to read:

"**72-16-906. Required filings.** The personal representative of the estate of any decedent whose estate is subject to the payment of a United States estate tax shall file ~~duplicates~~ a duplicate of the United States estate tax ~~returns~~ return with the ~~district--court--of--the--county--in which--such-estate-is-being-probated-and-with-the~~ department of revenue. He shall also file ~~with-such-court-and~~ with the department a certificate or other evidence from the internal revenue service showing the amount of the United States estate tax as computed by ~~that-agency~~ the internal revenue service."

NEW SECTION. **Section 29. Requirement that beneficiary survive insured by 120 hours.** A beneficiary in a policy of life or accident insurance who does not survive the insured by 120 hours is treated as if he had predeceased the insured unless the policy of insurance contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster or requiring that the beneficiary survive the insured for a stated period in order to receive the

proceeds of the policy.

NEW SECTION. **Section 30. Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 31. Codification instruction.** [Section 29] is intended to be codified as an integral part of Title 33, chapter 20, and the provisions of Title 33, chapter 20, apply to [section 29].

-End-

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on February 10, 1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Tom Beck, Bob Brown, John Harp, Mike Halligan, Loren Jenkins, Joe Mazurek, R. J. Pinsoneault and Bill Yellowtail

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion: There were none.

HEARING ON SENATE BILL 358

Presentation and Opening Statement by Sponsor: Senator Bob Williams of Hobson, District 15, opened the hearing. He said the bill was an act granting an unsuccessful bidder on a public contract the right to challenge the award in district court. If the court finds that the contract was not let to the lowest bidder whose bid was within the established specifications, the court shall invalidate that award to begin the bidding process again, he said. He reviewed the bill.

List of Testifying Proponents and What Group they Represent:

John Christianson, Attorney from Stanford
H. S. Hansen, Montana Technical Council

List of Testifying Opponents and What Group They Represent:

None

DISPOSITION OF SENATE BILL 131

Amendments and Votes: Senator Mazurek MOVED the amendments (Exhibit 4). The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Mazurek MOVED that Senate Bill 131 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON SENATE BILL 331

Presentation and Opening Statement by Sponsor: Senator Al Bishop of Billings, District 46, opened the hearing said his bill was an act to generally revise the uniform probate code and related law. He said he had been practicing law since 1952, before the probate code was enacted in 1974. His practice was basically in the probate field. He said before 1974, probate codes were difficult. In 1974, his law partner, Bob Hendrickson worked on a committee to draw up the law. He said there was a lot of resistance to the code because of fear of the unknown, especially how it would affect the attorneys' fees. But it resulted in simplification, made the process easier with no cost to the lawyers. The uniform probate code made it difficult for a lawyer to make a major mistake, he said. He distributed an amendment to committee members (Exhibit 5) and asked the committee to study it. He said the revision of the code came from amendments made by the uniform commissioners in 1987 from the national probate code and from Professor Eck's experience.

List of Testifying Proponents and What Group they Represent:

Ed Eck, UM Law School Professor
Dan McLane, Chairman of the Tax Probate Section

List of Testifying Opponents and What Group They Represent:

Walter Murfitt, Helena Attorney

Testimony:

Professor Eck presented written testimony to the committee (see Exhibit 6). He said there were three sources of amendment: The National Probate Code, lawyers and the law school. It was endorsed by the Tax and Probate Section Commissioners and the State Bar, he said.

He said, in speaking to the amendment, that it relates to the Uniform Transfers to Minors Act (UTMA) which was adopted in 1985. It could be referred to as a "poor man's trust" because a person can make transfers without having to go to the expense of setting up a trust document or having the administration of a trustee. A transfer of an asset is simply done by entitling it under the Uniform Transfers to Minors Act or making a provision as such in a will. One of the advantages was the age of transfer was 21. Unfortunately, the definition section of the UTMA was that the age of 18 had been used. This made for problems, he said, as there might be beneficiaries both over and under that age. The amendment would take care of that age difficulty. When the bill was originally requested, the section was included. However, the Legislative Council dropped the section because of a constitutional concern, he stated, namely Section 14, Article II of the Montana Constitution which reads that a person of 18 or over is an adult for all purposes.

Professor Eck said he did not share that constitutionality concern for the following reasons: 1. UTMA doesn't affect a minors rights in any way. However, the donor may or may not attach strings to the transfer. 2. The term minor is just a shorthand way of referring to a young person. 3. There are only two opinions advocated under the constitutional provision dealing with the majority age of 18, neither dealing with the UTMA -- one is an Attorney General's opinion and one is by the Supreme Court, he stated. The Attorney General's related to criminal law and after-care for minors who have been found guilty of crimes and after-care at the ages of 18, 19 or 20. The AG said yes, they could provide that care. The opinion said the constitution does not give adults new rights, nor does it preclude state classifications based on age. The Supreme Court opinion related to child support. A lower court opinion said that child support shall continue until further order of the court. The Montana Constitution was adopted and the question arose regarding the age for the continuance of child support.

Dan McLane referred to a letter that a Mr. Whitworth of Missoula had written Senator Halligan regarding the code amendment. He said that some members of the Tax Probate Council still had some concerns about individual items, but he urged the committee's adoption

of the bill. He suggested that the committee could address the statute of limitations in the bill.

Walter Murfitt appeared as an opponent of only one section (Section 5) of the bill, pertaining to who may witness a will. Lawyers previously felt that beneficiaries to a will should not be witnesses to it, so that limitation was included in the act. The saving and protective clause was that, if that person had also received a share and the individual had died in testate, that they could receive at least up to that share and the will would not be invalidated. There was good reason for that then and there is now, he said. Elderly persons may be unduly influenced by a close relative or friend. Section 5, he felt would promote litigation in will contests. He said by eliminating it, there would still be an opportunity to contest a will on the basis of fraud or influence.

Questions From Committee Members: Senator Pinsoneault asked if there should be any concern on the effective date as far as wills that are now being processed. Senator Eck said no, because the bill tended to liberalize validity if anything.

Senator Mazurek asked for comments on Mr. Murfitt's concerns. Professor Eck said the committee would have to balance a policy issue and decide on that for themselves. He said that the National UPC does not have those provisions. If Section 5 was adopted, he stated, Montana would be in conformance with National Uniform Probate Code. The drafters of that code would argue against Mr. Murfitt and he read from their report, which said the rare and innocent use of an interested bystander would no longer be penalized.

Senator Halligan said he didn't understand sub 2 of page 6, Section 4 (b). Professor Eck said that sub (b) is say that, the spouse is only going to get a third in one of three circumstances: 1. Where there are 2 children, 2. Where there is issue of 2 children, or 3. Where there 1 or more children and the issue of 1 or more children. It could apply when there are 2 family lines, he said, some living and some dead.

Senator Mazurek asked about a Louisiana decision that had been struck down along the same subject as the bill. He commented that there had been no effort to address the issue and wondered about discussion by the committee who drafted the bill. Professor Eck said it had been discussed. The committee had been in contact with the National Uniform

Commissioners regarding it. They (the national commissioners)were in disagreement as to whether or not the UPC provision on Notice to Creditors provision was akin to the Louisiana provision. Because of that uncertainty, the National UPC Commissioners had not proposed an amendment as yet. The Montana committee felt it would be best to wait for the national commissioners to come up with a code and then adopt that, he said.

Senator Mazurek asked if this law could cause any problems. Mr. McLane felt that Montana would be safe in acting in the manner of the bill at this time. He did, however, feel that we needed to address the issue of creditors. Usually, no problem occurs, he said, because the attorney makes an effort to find the creditors - credit card companies etc. Hospitals, he added, are always diligent about submitting bills, he said.

Senator Jenkins referred to Section 1, saying adopted children have been removed from that section. He wondered if they were covered under Section 3. Professor Eck said yes. This revision in the family law section in Title 70 had a rule different than the rule in the probate code. The probate basically says, if you are an adopted child, you are treated as a natural child. The adopted child has the same relationship as a natural child with only one exception -- a case where there is an adoption by the spouse of a natural parent. In that case, the child can still inherit from his natural father, as well as from his adopted father. The difference is in Title 40. The exception wasn't there, he said. The stricken language is to lead to Title 72. The committee felt that Title 40 had no business talking about heirs and wanted Title 72 take care of it, he stated.

Closing by Sponsor: Senator Bishop thanked Professor Eck and others for appearing. He said he understood Mr. Murfitt's concern. He said he had never used an interested party as a witness, but felt there were times when it would have been convenient. He felt, however, that most beneficiaries would prefer not to act as witnesses. He urged the committee's support.

Note: Amendments drafted by Valencia Lane for SB 331 were distributed to the committee (Exhibit 7). They were announced to be the same as those proposed by Senator Bishop, but were technically correct, written in the proper form.

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2-10-8

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE JUDICIARY
EXHIBIT NO 5, p. 1
DATE 2-10-89
BILL NO. SB 331

Proposed Amendments to Senate Bill 331 (Introduced bill - white copy)

Bishop's - same as Valencia's SB033101.avl

1. Title, line 11.
Following: "72-16-303,"
Strike: "AND"

2. Title, line 12.
Following: "72-16-906,"
Insert: "AND 72-26-502,"

3. Page 37.
Following: line 17
Insert: "Section 29. Section 72-26-502 is amended to read: 72-26-502. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:
(1) "Adult" means an individual who has attained the age of ~~18~~ 21 years.
(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.
(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.
(4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.
(5) "Court" means district court.
(6) "Custodial property" means
(a) any interest in property transferred to a custodian under this chapter; and
(b) the income from and proceeds of that interest in property.
(7) "Custodian" means a person so designated under 72-26-603 or a successor or substitute custodian designated under 72-26-801.
(8) "Financial institution" means a bank, trust company, savings institution, or credit union chartered and supervised under state or federal law.
(9) "Legal representative" means an individual's personal representative or conservator.
(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.
(11) "Minor" means an individual who has not attained the age of ~~18~~ 21 years.
(12) "Person" means an individual, corporation, organization, or other legal entity.
(13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.
(14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rice, and any territory or possession subject to the legislative authority of

SENATE JUDICIARY
EXHIBIT NO 5, p. 2
DATE 2-10-89
BILL NO SB331

the United States.
(15) "Transfer" means a transaction that creates custodial property under 72-26-603.
(16) "Transferor" means a person who makes a transfer under this chapter.
(17) "Trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers.

Renumber: subsequent sections

Submitted by Professor Ed Eck

SENATE JUDICIARY
EXHIBIT NO. 6
DATE 2-10-89
BILL NO. SB 331

E. Edwin Eck
University of Montana
School of law

AN ACT TO GENERALLY REVISE THE UNIFORM PROBATE CODE AND RELATED LAW
Senate Bill No. 331

Sources:

1. Amendments made by the Uniform Commissioners to the Uniform Probate Code in 1987.

2. The national Uniform Probate Code.

3. A few of the changes are the result of my teaching estate planning at the Law School.

Endorsement:

Unanimously endorsed by the Tax & Probate Section of the State Bar Association.

Amendment:

Modify the Montana Uniform Transfers to Minors Act (UTMA) to permit the creation of custodianships for beneficiaries aged 18, 19, and 20.

Advantages:

1. Donors (often parents) prefer that assets be managed for the benefit of the young person as long as possible.

2. A return to the national Uniform Transfers to Minors Act.

SENATE JUDICIARY
EXHIBIT NO. 7
DATE 2-10-89
BILL NO. SB 331

Amendments to Senate Bill No. 331
First Reading Copy (WHITE)

Requested by Professor Ed Eck
For the Committee on Judiciary

Prepared by Valencia Lane
February 9, 1989

(same as Bushape)

1. Title, line 11.
Following: "72-16-303,"
Strike: "AND"

2. Title, line 12.
Following: "72-16-906,"
Insert: "AND 72-26-502,"

3. Page 37, line 18.
Following: line 17
Insert: "Section 29. Section 72-26-502, MCA, is amended to read:
"72-26-502. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:
(1) "Adult" means an individual who has attained the age of ~~18~~ 21 years.
(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.
(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.
(4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.
(5) "Court" means district court.
(6) "Custodial property" means:
(a) any interest in property transferred to a custodian under this chapter; and
(b) the income from and proceeds of that interest in property.
(7) "Custodian" means a person so designated under 72-26-603 or a successor or substitute custodian designated under 72-26-801.
(8) "Financial institution" means a bank, trust company, savings institution, or credit union chartered and supervised under state or federal law.
(9) "Legal representative" means an individual's personal representative or conservator.
(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.
(11) "Minor" means an individual who has not attained the age of ~~18~~ 21 years.
(12) "Person" means an individual, corporation, organization,

or other legal entity.

(13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) "Transfer" means a transaction that creates custodial property under 72-26-603.

(16) "Transferor" means a person who makes a transfer under this chapter.

(17) "Trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers.""

Renumber: subsequent sections

DATE 2-10-89

COMMITTEE ON Judiciary BILL NO. 331

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Check One: Oppose
Kathleen Mazzon	self	✓	
[illegible]	self	[illegible]	[illegible]
[illegible]	State Bar Tax & Probate Section	✓	
[illegible]	self		

(Please leave prepared statement with Secretary)

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce D. Crippen, on February 11, 1989, at 7:00 a.m.

ROLL CALL

Members Present: Chairman Crippen, Vice Chairman Bishop, Senator Beck, Senator Brown, Senator Halligan, Senator Harp, Senator Jenkins, Senator Mazurek, Senator Pinsoneault, Senator Yellowtail

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Staff Attorney, Rosemary Jacoby, Committee Secretary

Announcements/Discussion: None

EXECUTIVE ACTION ON SENATE BILL 331

Discussion: Senator Crippen recalled that in testimony by Howdy Murfitt, he suggested reinserting that a close relative couldn't be a witness.

Senator Bishop stated that a practitioner would never use an interested person as a witness. The uniform probate provides for that, he said. This change would not increase the opportunity, under influence of substantial gift, by a will to a person who is not one of the witnesses to the execution of the will. That would itself be a suspicious circumstance. The gift could be challenged on grounds of undo influence. The requirement of the interested witnesses have not succeeded in preventing fraud and undo influence. And in most cases of undo influence, the influencer is careful not to sign as a witness, but to use this interested witness. He thought it ought to be left as presented.

Senator Mazurek asked how frequently Senator Bishop ran into holographic or home-prepared wills where interested

persons were used as witnesses?" Senator Bishop stated that he never saw a will that had a interested witness. The only thing that would be helpful, he said, would be for them to draw up their own will.

Amendments and Votes: Senator Halligan wanted it stated in the record that the amendments (Exhibit 1) were proposed for the reasons stated in the UPC explanation.

Senator Bishop moved that SB 331 be amended the way it is presented. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Halligan moved that SB 331 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SENATE BILL 358

Discussion: Senator Crippen identified the bill as Senator Williams' "right to challenge" bill. He asked the committee to look at the amendments (See Exhibit 2.) The amendments essentially (throughout the bill in several sections) take out the last line. Instead of requiring that the contract be rebid using the same specs, it requires award to the lowest responsible bidder, explained Valencia Lane, staff attorney.

Amendments and Votes:

Senator Beck moved amendments to Senate Bill 358. The motion CARRIED UNANIMOUSLY.

Further Discussion:

Senator Crippen stated that the bill does allows a contractor to contest the award in court and provides that the local government would not have to go through the bidding process again.

Valencia Lane called attention to p.2, line 13, following 2 of the amendments where it said to strike the remainder of line 13 through "bid". She said it would read would invalidate the award and order the municipality to award the bid to the lowest responsible bidder.

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date _____

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

Hawley Murfitt's suggested amend. A

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 2-11-89
BILL NO. SB 331

Amendments to Senate Bill No. 331
First Reading Copy (WHITE)

Requested by Prof. Ed Eck
For the Committee on Judiciary

Prepared by Valencia Lane
February 10, 1989

1. Page 7, line 1.
Following: page 6
Insert: "(3) All beneficial devises made in any will to a subscribing witness thereto are void unless there are two other competent subscribing witnesses to the same, but a mere charge on the estate of the testator does not prevent his creditors from being competent witnesses to his will.

(4) If a witness to whom any beneficial devise void under subsection (3) is made would have been entitled to any share of the estate of the testator if the testator had died intestate, such witness succeeds to so much of the share as would be distributed to him under intestate succession, not exceeding the devise or bequest made to him in the will."

SENATE STANDING COMMITTEE REPORT

February 11, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 331 (first reading copy -- white), respectfully report that SB 331 be amended and as so amended do pass:

1. Title, line 11.
Following: "72-16-303,"
Strike: "AND"

2. Title, line 12.
Following: "72-16-906,"
Insert: "AND 72-26-502,"

3. Page 37, line 18.
Following: line 17
Insert: "Section 29. Section 72-26-502, MCA, is amended to read:

"72-26-502. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who has attained the age of ~~18~~ 21 years.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(5) "Court" means district court.

(6) "Custodial property" means:

(a) any interest in property transferred to a custodian under this chapter; and

(b) the income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under 72-26-603 or a successor or substitute custodian designated under 72-26-801.

(8) "Financial institution" means a bank, trust company, savings institution, or credit union chartered and supervised under state or federal law.

continued

(9) "Legal representative" means an individual's personal representative or conservator.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of ~~18~~ 21 years.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) "Transfer" means a transaction that creates custodial property under 72-26-603.

(16) "Transferor" means a person who makes a transfer under this chapter.

(17) "Trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers.""

Renumber: subsequent sections

AND AS AMENDED DO PASS

Signed: _____

Bruce D. Crippen, Chairman

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-11-89 Senate Bill No. 331 Time

NAME	YES	NO
SEN. BISHOP		
SEN. BECK		
SEN. BROWN		
SEN. HALLIGAN		
SEN. HARP		
SEN. JENKINS		
SEN. MAZUREK		
SEN PINSONEAULT		
SEN.YELLOWTAIL		
SEN. CRIPPEN		
	10	0 UNA

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Bish Amended Amend A Mend - changing age from 18 to 21 — UNAN

Halligan DPA UNAN

SF-3 (Rev. 1987)

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on March 8, 1989, at 8:09 a.m.

ROLL CALL

Members Present: All members were present.

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

HEARING ON SENATE BILL 45

Presentation and Opening Statement by Sponsor:

Sen. Joe Mazurek, Senate District 23, stated SB 45 deletes Section 40-8-121 (4), MCA, relating to private adoption placements, enacted in 1983 which was based on a desire from the Department of Social and Rehabilitation Services (SRS) to get people to file petitions for adoption as quickly as possible after placement of a child is made with them. This subsection has created a problem in that although adoption agencies do preplacement investigations, postplacement investigations, and then send the necessary paperwork out for the adoption as quickly as possible, all of this may not occur within one year in accordance with the statute. Sen. Mazurek noted adoptive parents want the legal relationship established as quickly as possible, which is hopefully within the one-year provision. He indicated no penalty is provided for not doing so within one year. Concern has been expressed as to whether an adoption may be set aside if this requirement is not met. Sen. Mazurek felt this requirement was a trap for the unwary, was not self-enforcing, and potentially jeopardized an adoptive placement.

Testifying Proponents and Who They Represent:

None.

Closing By Sponsor: Sen. Mazurek closed the hearing.

DISPOSITION OF SENATE BILL 131

Motion: Rep. Wyatt moved SB 131 BE CONCURRED IN. Rep. Eudaily seconded the motion.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Motion CARRIED unanimously for SB 131 BE CONCURRED IN.

HEARING ON SENATE BILL 331

Presentation and Opening Statement by Sponsor:

Sen. Al Bishop, Senate District 46, stated SB 331 revises the Montana Uniform Probate Code to bring it in line with the NCCUSL recommendations and with the uniform code. A lot of this bill is cleanup language. In addition, the Uniform Transfers to Minors Act presently provides that at 18, they become entitled to that property. This bill amends that to include those who are 18, 19, and 20 years old to make it more desirable for people to put money in to make the transfers under the Uniform Transfers to Minors Act.

Testifying Proponents and Who They Represent:

Professor E. Edwin Eck, University of Montana School of Law

Proponent Testimony:

Professor E. Edwin Eck, University of Montana School of Law, presented written testimony in support of SB 331 (EXHIBIT 3). He indicated this act consists of 30 separate substantive provisions which in one sense are not related at all except they deal with death, dying, and taxes, but there's no overwhelming common theme.

Testifying Opponents and Who They Represent:

Walter S. Murfitt, Helena Attorney

Opponent Testimony:

Walter S. Murfitt, Helena attorney, expressed a concern about a provision in the bill which discusses the witnessing of wills. Mr. Murfitt indicated that currently a beneficiary witnessing the will does not invalidate the will but the beneficiary would lose the benefit and, if the witness would have succeeded to his share, he would get the share he would have been entitled to if the person had died intestate. His concern was about homedrawn and homedrafted wills, as he did not feel lawyers would use beneficiaries as witnesses. He strongly opposed this particular section and this section only as he felt this opened the door to additional and unnecessary litigation over will contests.

Questions from the Committee: Rep. Eudaily addressed a question to Sen. Bishop about the number of years which has changed (page 3, line 13, and page 39, line 4). Prof. Eck indicated the change on page 3 to five rather than seven years is part of the 1987 national Uniform Probate Code provisions. Prof. Eck indicated the change on page 39 changing it from 18 to 21 years brings our statutes in conformance with the Uniform Transfers to Minors Act. Rep. Eudaily asked if this meant that under no circumstances could the property not be given at age 18. Prof. Eck responded if a person wants to make a gift in a will and does not refer to the Uniform Transfers to Minors Act, the child will receive it at age 18 because under our state law that child is an adult for all purposes. However, if the Uniform Transfers to Minors Act is mentioned in the will, the property will be held until age 21.

Rep. Eudaily asked an additional question regarding a provision of the bill which required 120-hour survivorship to collect insurance proceeds. Sen. Bishop responded that was a new section, section 30, which brings the bill into conformity with the other parts of our probate code that require 120-hour survivorship, indicating the requirement should not be different for insurance proceeds than anything else.

Rep. Mercer addressed a question about section 16 which deleted the $7,500 provision from the summary probate. He was concerned that in some situations where a person would have less than $7,500 of net distributable estate but there wasn't a homestead allowance or exempt property, they would be denied the summary procedure that is now available. Prof. Eck indicated this provision would again bring us in compliance with the national code. The went on to explain the problem with this particular provision as it reads now is that distribution, as it is defined in the Uniform

Probate Code, talks about a gratuitous transfer as opposed to a transfer that has to be made by an estate to satisfy a claim. This provision creates an ambiguity--does it mean you don't have to publish notice to creditors--because the only way you can define a distributable estate is to actually have the creditors' claim process go forward. This act does not deal with Sections 72-3-1101 and -1102, MCA, which allows you by affidavit if the amount of the assets does not exceed $7,500 to distribute those assets without probate, so that is not affected by this.

Closing by Sponsor: Sen. Bishop indicated there were other proponents who appeared before the Senate Committee on Judiciary. Sen. Bishop read the Uniform Probate Code comment relating to Mr. Murfitt's concern about interested witnesses. The comment indicates the purpose of the change was not to foster use of interested witnesses and attorneys who would continue to use disinterested witnesses in execution of wills, but the rare and innocent use of a member of the testator's family on a homedrawn will would no longer be penalized. This change does not increase appreciably the opportunity for fraud and undue influence. The comment went on to state the requirement of disinterested witnesses has not succeeded in preventing fraud and undue influence, and in most cases of undue influence, the influencer is careful not to sign as a witness but uses someone else.

DISPOSITION OF SENATE BILL 331

Motion: Rep. Darko moved SB 331 BE CONCURRED IN. Rep. Strizich seconded the motion.

Discussion: Addressing Mr. Murfitt's concern, Rep. Mercer commented current law states holographic wills are valid but if your two kids sign your holographic will, it is invalid, so he felt they were on the right track, yet any interested party who witnesses a will is subjecting himself to a very strong case of undue influence. He hoped that when this is off the books, lawyers would not start having just anyone witness wills, such as children and spouses, as that would be a bad idea.

Recommendation and Vote: The committee held further action taken on SB 331 so as amendments could be drafted. Final action was taken on March 9, 1989.

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date MARCH 8, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

CS-30

EXHIBIT 3
DATE 3-8-89
SB 331

E. Edwin Eck
University of Montana
School of law

AN ACT TO GENERALLY REVISE THE UNIFORM PROBATE CODE
AND RELATED LAW
Senate Bill No. 331

Sources:

1. Amendments made by the Uniform Commissioners to the Uniform Probate Code in 1987.

Example: Section 11 of the Bill would require personal representatives of estates to notify interested parties that a probate proceeding is not supervised by a court and that an interested party may petition the court on matters concerning the estate.

2. The national Uniform Probate Code.

Example: Section 13 of the Bill would make Montana section 72-3-805 conform with the national Uniform Probate Code. 72-3-805(1) reads, in part:

Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of disallowance [emphasis added].

EXHIBIT 3
DATE 3-8-89
SB 331

3. A few of the changes are the result of my teaching estate planning at the Law School.

Example: Section 1 of the Bill would eliminate an inconsistency between the family law provisions (40-8-125) and the probate code provisions (72-2-213) as they affect inheritance and adopted children.

Endorsement:

Unanimously endorsed by the Tax & Probate Section of the State Bar Association.

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. SENATE BILL 331 DATE MARCH 8, 1989

SPONSOR SEN. BISHOP

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Kathleen Magone	self / U of M Law School	✓	
Howard Kalgard	TRUST DIVISION Montana Bankers Assn	✓	
[illegible]	Tax Section State Bar	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Vice Chairman Kelly Addy, on March 9, 1989, at 8:05 a.m.

ROLL CALL

Members Present: All members were present with the following exception:

Members Excused: Rep. Dave Brown

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

HEARING ON SENATE BILL 417

Presentation and Opening Statement by Sponsor: Sen. Del Gage, Senate District 5, stated SB 417 dealt with the harming of a police dog.

Testifying Proponents and Who They Represent:

None.

Proponent Testimony:

None.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions from the Committee: Rep. Boharski asked Sen. Gage if he had looked into other states that may have this law. Sen. Gage responded he hadn't.

Closing by Sponsor: Sen. Gage closed.

causing bodily injury or reasonable apprehension thereof and someone who for the purpose to annoy another places a religious symbol on someone else's property. Sen. Mazurek responded that like any criminal statute, you can devise a circumstance which is borderline within the purview of the language which is the law. He did not feel this is unlike a lot of other situations where you have to use the rule of common sense and prosecutorial discretion. He felt a prosecutor would still have available the offense of criminal mischief while watering this bill down to allow an escape route for someone who really should not come under the purview of this act would minimize the places where it can be effectively.

Closing by Sponsor: Sen. Mazurek thanked the committee for the hearing and those who traveled to speak in support of the bill.

DISPOSITION OF SENATE BILL 293

Motion: Rep. Darko moved SB 293 BE CONCURRED IN, motion seconded by Rep. McDonough.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Darko moved SB 293 be amended as follows:

Page 3, line 1.
After: "ethnic"
Insert: "identity or"

The amendment was seconded by Rep. Eudaily and CARRIED unanimously.

Recommendation and Vote: Rep. Strizich moved SB 293 BE CONCURRED IN AS AMENDED, motion seconded by Rep. Brooke. Motion CARRIED with a unanimous vote.

DISPOSITION OF SENATE BILL 331

Motion: Rep. Stickney moved SB 331 BE CONCURRED IN, motion seconded by Rep. McDonough.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Stickney moved SB 331 be amended as follows:

Page 33.
Strike: "(4)(3) does not apply"
Insert: "(3)(b) does not apply"

The amendment was seconded by Rep. McDonough and CARRIED with all in favor.

Recommendation and Vote: Rep. McDonough moved SB 331 BE CONCURRED IN AS AMENDED, motion seconded by Rep. Stickney. Motion CARRIED unanimously.

ADJOURNMENT

Dave Brown
REP. DAVE BROWN, Chairman

DB/je

5508.min

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date MARCH 9, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN			X

CS-30

STANDING COMMITTEE REPORT

March 9, 1989

Mr. Speaker: We, the committee on Judiciary report that SENATE BILL 331 (third reading copy -- blue) be concurred in as amended.

Signed: _____
Kelly Addy, Vice-Chairman

[REP. _____ WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendment read:

1. Page 33, line 18.
Following: "(3)"
Insert: "(b)"

SENATE BILL NO. 331

INTRODUCED BY BISHOP

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE UNIFORM PROBATE CODE AND RELATED LAW; REQUIRING A 120-HOUR SURVIVORSHIP TO COLLECT INSURANCE PROCEEDS; AND AMENDING SECTIONS 40-8-125, 72-1-108, 72-2-104, 72-2-202, 72-2-305, 72-2-516, 72-2-517, 72-2-704, 72-3-122, 72-3-213, 72-3-603, 72-3-607, 72-3-805, 72-3-902, 72-3-917, 72-3-1103, 72-3-1104, 72-5-302 THROUGH 72-5-304, 72-5-325, 72-5-435, 72-5-438, 72-5-501, 72-16-301 THROUGH 72-16-303, AND 72-16-906, AND 72-26-502, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-8-125, MCA, is amended to read:

"40-8-125. Effect of final decree. (1) After the final decree of adoption is entered, the relation of parent and child and all the rights, duties, and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child and the kindred of the adoptive parents. ~~From--the--date--of--the-final-decree-of adoption,-the-child-shall-be-entitled-to--inherit--real--and personal--property-from-and-through-the-adoptive-parents-and the-kindred-of-the-adoptive-parents-in-accordance--with--the statutes--of--descent--and--distribution--and--the--adoptive parents-and-their-kindred-shall-be-entitled-to-inherit--real and---personal--property--from--and--through--the--child--in accordance-with-said-statutes.~~

(2) After a the final decree of adoption is entered, the natural parents and the kindred of the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved of all parental responsibilities for said child and have no rights over such adopted child ~~or-to-his-property-by-descent and-distribution~~.

(3) The relationship of parent and child for the purposes of intestate succession is governed by Title 72."

Section 2. Section 72-1-108, MCA, is amended to read:

"72-1-108. Evidential rules applicable -- evidence as to death or status. (1) In proceedings under this code the rules of evidence in courts of general jurisdiction, including any relating to simultaneous deaths, are applicable unless specifically displaced by the code.

(2) In addition, the following rules relating to determination of death and status are applicable:

(a) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date, and time of death and

the identity of the decedent.

(b) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(c) In the absence of prima facie evidence of death under subsection (2)(a) or (2)(b), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

~~(c)~~(d) A person whose death is not established under subsections (2)(a) through (2)(c), who is absent for a continuous period of ~~7~~ 5 years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier."

Section 3. Section 72-2-104, MCA, is amended to read:

"72-2-104. Homicide -- effect on intestate succession, wills, joint assets, life insurance, and beneficiary designations. (1) A surviving spouse, heir, or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this chapter, and the estate of the decedent passes as if the

killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(2) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(4) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

(5) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and

intentional killing, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

(6) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

(7) For the purposes of this section, a felonious and intentional killing includes a deliberate homicide as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103."

Section 4. Section 72-2-202, MCA, is amended to read:

"72-2-202. Share of spouse. The intestate share of the surviving spouse is:

(1) if there is no surviving issue or if there are surviving issue all of whom are issue of the surviving spouse also, the entire remaining estate;

(2) if there are surviving issue one or more of whom

are not issue of the surviving spouse, as follows:

(a) if there is surviving only one such child or the issue of one such child, one-half of the intestate estate;

(b) if there are surviving ~~more-than-one-such-child-or one-such-child~~ two or more children, the issue of two or more deceased children, or one or more children and the issue of one or more deceased children, one-third of the intestate estate."

Section 5. Section 72-2-305, MCA, is amended to read:

"72-2-305. Who may witness -- effect of witness by beneficiary. (1) Any person generally competent to be a witness may act as a witness to a will.

(2) A will is not invalid because the will is signed by an interested witness.

~~(3)--All--beneficial--devises--made--in--any--will-to-a subscribing-witness-thereto-are-void-unless--there--are--two other--competent--subscribing--witnesses--to-the-same;-but-a mere-charge-on-the-estate-of-the-testator-does--not--prevent his-creditors-from-being-competent-witnesses-to-his-will.~~

~~(4)--If--a--witness--to-whom-any-beneficial-devise-void under-subsection-(3)-is-made-would-have-been-entitled-to-any share-of-the-estate-of-the-testator-if-the-testator-had-died intestate;-such-witness-succeeds-to-so-much-of-the-share--as would--be-distributed-to-him-under-intestate-succession;-not exceeding-the-devise-or-bequest-made-to-him-in-the-will.~~"

Section 6. Section 72-2-516, MCA, is amended to read:

"72-2-516. Nonademption of specific devises in certain cases. ~~(1)--If--specifically--devised-property-is-sold-by-a conservator-or-if-a-condemnation-award-or-insurance-proceeds are-paid-to-a-conservator-as-a-result-of-condemnation,-fire, or-casualty,--the--specific--devisee--has--the--right--to--a pecuniary--devise--equal--to--so--much--of--the--sale-price, condemnation-award,-or-insurance-proceeds-as-remains-in--the estate--and--is--identifiable--at-the-time-of-the-decedent's death.-This-subsection-does-not-apply-if-subsequent--to--the sale,--condemnation,--or-casualty-it-is-adjudicated-that-the disability-of-the--testator--has--ceased--and--the--testator survives--the--adjudication--by--1--year.---The-right-of-the specific-devisee-under-this-subsection--is--reduced--by--any right-he-has-under-subsection-(2).~~

~~(2)~~(1) A specific devisee has the right to the remaining specifically devised property and:

(a) any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property;

(b) any amount of a condemnation award for the taking of the property unpaid at death;

(c) any proceeds unpaid at death on fire or casualty insurance on the property; and

(d) property owned by testator at his death, as a

result of foreclosure or obtained in lieu of foreclosure of the security for a specifically devised obligation.

(2) If specifically devised property is sold by a conservator or an agent acting within the authority of a durable power of attorney for a principal who is under a disability, or if a condemnation award or insurance proceeds are paid to a conservator or an agent acting within the authority of a durable power of attorney for a principal who is under a disability, as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if after the sale, condemnation, or casualty it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by 1 year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (1)."

Section 7. Section 72-2-517, MCA, is amended to read:

"72-2-517. Changes in devised securities -- distributions prior to death. (1) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(a) as much of the devised securities as is a part of

the estate at time of the testator's death;

(b) any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity, excluding any securities acquired by exercise of purchase options;

(c) securities of another entity owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity; and

(d) any additional securities of the entity owned by the testator as a result of a plan of reinvestment ~~if it is a regulated investment company~~.

(2) Distributions prior to death with respect to a specifically devised security not provided for in subsection (1) are not part of the specific devise."

Section 8. Section 72-2-704, MCA, is amended to read:

"72-2-704. ~~Effect of election on benefits by will or statute~~ Surviving spouse -- allowance -- exemptions. ~~(1) The surviving spouse's election of his elective share does not affect the share of the surviving spouse under the provisions of the decedent's will or intestate succession unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions; if any provision is so renounced, the property or other benefit which would otherwise have passed to the surviving spouse thereunder is treated, subject to~~

~~contribution under 72-2-706(2), as if the surviving spouse had predeceased the testator.~~

~~(2)~~ A surviving spouse is entitled to homestead allowance, exempt property, and family allowance whether or not he elects to take an elective share."

Section 9. Section 72-3-122, MCA, is amended to read:

"72-3-122. Time limit on probate, testacy, and appointment proceedings -- exceptions. (1) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent's death, except:

(a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed at any time within 3 years

after the conservator becomes able to establish the death of the protected person; ~~and~~

(c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death; and

(d) if no proceeding concerning the succession or administration of the estate has occurred within 3 years after the decedent's death, a formal testacy proceeding may be commenced at any time thereafter for the sole purpose of establishing a devise of property which the devisee or his successors and assigns possessed in accordance with the will or property which was not possessed or claimed by anyone by virtue of the decedent's title during the 3-year period, and the order of the court must be limited to that property.

(2) These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate, ~~nor do they limit the right of interested persons to commence informal probate or appointment proceedings or formal testacy or appointment proceedings at any time after 3 years from the decedent's death if there have been no previous formal or informal probate or appointment proceedings commenced in respect of that decedent.~~

(3) In cases under (1)(a) or (1)(b) above, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death."

Section 10. Section 72-3-213, MCA, is amended to read:

"72-3-213. Rules for grant or denial of informal probate. (1) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under 72-2-302, 72-2-303, or 72-2-306 have been met shall be probated without further proof. In other cases the clerk may assume execution if the will appears to be properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(2) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (3) below, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the

statement probating it from the office or court where it was first probated.

(4) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under 72-3-212 may be probated in this state upon receipt by the clerk of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

(5) Application for informal probate which relates to one or more of a known series of testamentary instruments (other than ~~wills and codicils~~ a will and one or more codicils to the will), the latest of which does not expressly revoke the earlier, shall be declined."

Section 11. Section 72-3-603, MCA, is amended to read:

"72-3-603. Notice of appointment to heirs and devisees. (1) Not later than 30 days after his appointment, every personal representative, except any special administrator, shall give information of his appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail

to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate.

(2) (a) The information ~~shall~~ must:

~~(a)~~(i) include the name and address of the personal representative;

~~(b)~~(ii) indicate that it is being sent to persons who have or may have some interest in the estate being administered;

~~(c)~~(iii) indicate whether bond has been filed; and

~~(d)~~(iv) describe the court where papers relating to the estate are on file.

(b) The information must state that the estate is being administered by the personal representative under the uniform probate code without supervision by the court but that recipients are entitled to information regarding the administration from the personal representative and may petition the court in any matter relating to the estate, including distribution of assets and expenses of administration.

(3) The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his

powers, or other duties.

(4) A personal representative may inform other persons of his appointment by delivery or ordinary first-class mail."

Section 12. Section 72-3-607, MCA, is amended to read:

"72-3-607. Inventory -- appraisal -- copy to department of revenue. (1) Within ~~3--months--after--his appointment~~ the time required for the filing of a United States estate tax return plus any extensions granted by the internal revenue service, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory, which inventory shall include listing of all property which:

(a) the decedent owned, had an interest in or control over, individually, in common, or jointly, or otherwise had at the time of his death;

(b) the decedent had possessory or dispository rights over at the time of his death or had disposed of for less than its fair market value within 3 years of his death; or

(c) was affected by the decedent's death for the purpose of inheritance or estate taxes.

(2) The inventory shall include a statement of the full and true value of the decedent's interest in every item listed in such inventory. In this connection the personal

representative shall appoint one or more qualified and disinterested persons to assist him in ascertaining the fair market value as of the date of the decedent's death of all assets included in the estate. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

(3) The personal representative shall send a copy of the inventory to interested persons who request it, or he may file the original of the inventory with the court. In any event, a copy of the inventory and statement of value shall be mailed to the department of revenue."

Section 13. Section 72-3-805, MCA, is amended to read:

"72-3-805. Allowance and disallowance of claims -- interest on allowed claims. (1) As to claims presented in the manner described in 72-3-804 within the time limit prescribed in 72-3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run

and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of ~~disallowance~~ allowance.

(2) After allowing or disallowing a claim, the personal representative may change the allowance or disallowance as provided in this section. The personal representative may change the allowance to a disallowance, in whole or in part, prior to payment, but not after allowance by a court order or judgment or an order directing payment of the claim. The personal representative shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subsection (1). The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred under subsection (1). After it is barred, it may be allowed and paid only if the estate is solvent and all

successors whose interests would be affected consent.

~~(2)~~(3) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow, in whole or in part, any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (1) ~~of this section~~. Notice in this proceeding shall be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

~~(3)~~(4) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

~~(4)~~(5) Unless otherwise provided in any judgment in another court entered against the personal representative, an allowed ~~claims--bear~~ claim bears interest at the legal rate for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case ~~they bear~~ the claim bears interest in accordance with that provision."

Section 14. Section 72-3-902, MCA, is amended to read:

"**72-3-902. Distribution in kind preferred -- method -- valuation.** Unless a contrary intention is indicated by the

will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(1) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in 72-2-802 shall receive the items selected.

(2) Any homestead or family allowance or devise ~~payable in~~ of a stated sum of money may be satisfied by ~~value~~ in kind, provided:

(a) the person entitled to the payment has not demanded payment in cash;

(b) the property distributed in kind is valued at fair market value as of the date of its distribution; and

(c) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(3) For the purpose of valuation under subsection (2), ~~securities~~ any security regularly traded on a recognized ~~exchanges~~ exchange, if distributed in kind, ~~are~~ is valued at the price for the last sale of like securities traded on the business day prior to distribution or, if there was no sale on that day, at the median between amounts bid and ~~offered~~ asked at the close of that day. ~~Assets~~ An asset consisting of ~~sums~~ a sum owed the decedent or the estate by a solvent ~~debtors~~ debtor as to which there is no known dispute or

defense ~~are~~ is valued at the sum due with accrued interest or discounted to the date of distribution. For ~~assets~~ an asset which ~~do not have~~ has no readily ascertainable ~~values~~ value, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of ~~the assets~~ any asset as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the ~~assets~~ asset may have been previously appraised.

(4) The residuary estate shall be distributed in ~~kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution~~ any equitable manner."

Section 15. Section 72-3-917, MCA, is amended to read:

"72-3-917. Distribution to person under disability. (1) A personal representative may discharge his obligation to distribute to any person under legal disability by distributing ~~to his conservator or any other person authorized by this code or otherwise to give a valid receipt and discharge for the distribution~~ in a manner expressly provided in the will.

(2) Unless contrary to an express provision in the

will, the personal representative may discharge his obligation to distribute to a minor or person under other disability as authorized by 72-5-501 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

(3) (a) If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:

(i) an attorney-in-fact who has authority under a power of attorney to receive property for that person; or

(ii) the spouse, parent, or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding $10,000 a year or property not exceeding $10,000 in value, unless the court authorizes a larger amount or greater value.

(b) Any person receiving money or property for the disabled person is obligated to apply the money or property to the support of that person, but may not pay himself except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or

property distributed pursuant to this subsection (3)."

Section 16. Section 72-3-1103, MCA, is amended to read:

"**72-3-1103. Summary procedure for disbursement and distribution.** If it appears from the inventory and appraisal that the value of the ~~net--distributable--estate--does--not exceed--$7,500-or-the-value-of-the~~ entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to the creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in 72-3-1104."

Section 17. Section 72-3-1104, MCA, is amended to read:

"**72-3-1104. Closing by sworn statement of personal representative -- termination of appointment.** (1) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of 72-3-1103 by filing with the court, at any time after disbursement and distribution of

the estate, a verified statement stating that:

(a) to the best knowledge of the personal representative, ~~the--value--of-the-net-distributable-estate did-not-exceed-$7,500-or~~ the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

(b) the personal representative has fully administered the estate by payment of inheritance taxes and by disbursing and distributing it to the persons entitled thereto; and

(c) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(2) If no actions or proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.

(3) A closing statement filed under this section has the same effect as one filed under 72-3-1004."

Section 18. Section 72-5-302, MCA, is amended to read:

"72-5-302. Testamentary appointment of guardian for incapacitated person -- when effective -- priorities. (1) The parent of an unmarried incapacitated person may appoint by will ~~appoint~~ or other writing signed by the parent and attested by at least two witnesses a guardian of the incapacitated person. ~~A--testamentary~~ If both parents are dead or the surviving parent is adjudged incapacitated, a parental appointment ~~by--a--parent~~ becomes effective when, after having given 7 days' prior written notice of ~~his~~ intention to do so to the incapacitated person and to the person having ~~his~~ care of the person or to ~~his~~ the nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, ~~if-prior-thereto-both--parents--are--dead--or--the surviving--parent-is-adjudged-incapacitated.~~ or, in the case of a nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court, as provided by 72-5-304. If both parents are dead, an effective appointment by the parent who died later has priority ~~unless it--is--terminated--by--the--denial--of--probate--in--formal proceedings~~.

(2) The spouse of a married incapacitated person may appoint by will ~~appoint~~ or other writing signed by the

spouse and attested by at least two witnesses a guardian of the incapacitated person. The appointment becomes effective when, after having given 7 days' prior written notice of ~~his~~ intention to do so to the incapacitated person and to the person having ~~his~~ care of the incapacitated person or to ~~his~~ the nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated~~;~~ or, in the case of nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court, as provided by 72-5-304. An effective appointment by a spouse has priority over an appointment by a parent ~~unless--it--is-terminated-by-the denial-of-probate-in-formal-proceedings.~~"

Section 19. Section 72-5-303, MCA, is amended to read:

"72-5-303. Recognition of appointment of guardian by foreign will. ~~This-state-shall-recognize-a-testamentary~~ An appointment effected by filing the guardian's acceptance under a will probated ~~at-the-testator's~~ in the state of the decedent's domicile ~~in-another-state~~ is effective in this state."

Section 20. Section 72-5-304, MCA, is amended to read:

"72-5-304. Objection by alleged incapacitated person to testamentary appointment. ~~On~~ Upon the filing ~~with~~ in the

court in which the will was probated or, in the case of a nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present, of written objection to the appointment by the incapacitated person for whom a ~~testamentary~~ parental or spousal appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the ~~testamentary~~ parental or spousal nominee or any other suitable person upon an adjudication of incapacity in proceedings under ~~this-part~~ 72-5-305 through 72-5-325."

Section 21. Section 72-5-325, MCA, is amended to read:

"72-5-325. Petition for removal or resignation of guardian -- termination of incapacity. (1) On petition of the ward or any person interested in ~~his~~ the ward's welfare, the court, after hearing, may remove a guardian ~~and--appoint a--successor~~ if in the best interests of the ward. On petition of the guardian, the court, after hearing, may accept ~~his~~ a resignation ~~and-make-any-other-order-which-may be-appropriate~~.

(2) An order adjudicating incapacity may specify a minimum period, not exceeding ~~1-year~~ 6 months, during which ~~no~~ a petition for an adjudication that the ward is no longer incapacitated may not be filed without special leave. Subject to ~~this~~ that restriction, the ward or any person

interested in ~~his~~ the welfare of the ward may petition for an order that ~~he~~ the ward is no longer incapacitated and for ~~removal---or---resignation~~ termination of the ~~guardian~~ guardianship. A request for ~~this~~ an order may also be made ~~by-informal-letter~~ informally to the court ~~or-judge~~, and any person who knowingly interferes with transmission of ~~this kind-of~~ the request ~~to-the-court-or-judge~~ may be adjudged guilty of contempt of court.

(3) ~~Before--removing--a~~ Upon removal, resignation, or death of the guardian~~,-accepting-the-resignation-of-a~~ or if the guardian~~,--or--ordering--that--a--ward's-incapacity-has terminated~~ is determined to be incapacitated, the court~~,~~ ~~following-the-same-procedures-to-safeguard-the-rights-of-the ward--as--apply-to-a-petition-for-appointment-of-a-guardian,~~ ~~may send-a-visitor-to-the-residence-of-the-present~~ appoint a successor guardian and ~~to-the-place-where-the--ward--resides or--is-detained,-to-observe-conditions-and-report-in-writing to-the-court~~ make any other appropriate order. Before appointing a successor guardian or ordering that a ward's incapacity has terminated, the court shall follow the same procedures to safeguard the rights of the ward that apply to a petition for appointment of a guardian."

Section 22. Section 72-5-438, MCA, is amended to read:

"72-5-438. Accounts -- final and intermediate. (1) ~~Unless-waived-by-the--court,--every~~ Each conservator must

shall account to the court for ~~his~~ administration of the trust not less than annually ~~for--the--preceding--year--and also~~, unless the court directs otherwise, upon ~~his~~ resignation or removal, and at other times as the court may direct. ~~A--copy--of--the--account--must--be-served-upon-the protected-person's-parent,-guardian,-child,--or--sibling--if that-person-has-made-an-effective-request-under-72-5-404.~~ On termination of the protected person's minority or disability, a conservator ~~may~~ shall account to the court or ~~he--may--account~~ to the ~~former~~ formerly protected person or ~~his-personal-representative~~ the successors of that person.

(2) Subject to appeal or vacation within the time permitted, an order ~~made-upon~~, after notice and hearing, allowing an intermediate account of a conservator adjudicates as to ~~his~~ liabilities concerning the matters considered in connection ~~therewith~~ with the hearing; and an order ~~made-upon~~, following notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or ~~his~~ the protected person's successors relating to the conservatorship.

(3) In connection with any account, the court may require a conservator to submit to a physical check of the estate ~~in-his-control~~, to be made in any manner the court ~~may-specify~~ specifies.

~~(4)--Upon-failure,-as-determined-by-the-clerk-of-court,-of--the--conservator--to--file--an-annual-account,-the-court shall-order-the-conservator-to-file--the--account--and--give good-cause-for-his-failure-to-file-a-timely-account."~~

Section 23. Section 72-5-435, MCA, is amended to read:

"**72-5-435. Persons dealing with conservator -- protection.** (1) A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in 72-5-421 is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in 72-5-430 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator.

(2) The protection ~~here~~ expressed in this section extends to ~~instances---in---which--some~~ any procedural irregularity or jurisdictional defect ~~occurred~~ occurring in proceedings leading to the issuance of letters and is not a substitution for protection provided by comparable provisions of the law relating to commercial transactions or laws simplifying transfers of securities by fiduciaries.

(3) The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries."

Section 24. Section 72-5-501, MCA, is amended to read:

"**72-5-501. When power of attorney not affected by disability.** (1) A durable power of attorney is a power of attorney by which a principal designates another his attorney-in-fact or agent in writing and the writing contains the words, "This power of attorney shall not be affected by subsequent disability or incapacity of the principal or lapse of time" or "This power of attorney shall become effective upon the disability or incapacity of the principal" or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. All acts done by the attorney-in-fact ~~or-agent~~ pursuant to ~~the~~ a durable power of attorney during any period of disability or incapacity ~~or-uncertainty-as-to whether~~ of the principal ~~is-dead--or--alive~~ have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were alive, competent, and not disabled. Unless the instrument

states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.

(2) If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, is accountable to the conservator as well as the principal. The conservator has the same power to revoke or amend the power of attorney that the principal would have had if he were not disabled or incapacitated. A principal may nominate, by a durable power of attorney, the conservator of his estate or guardian of his person for consideration by the court if protective proceedings for the principal's person or estate are thereafter later commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification."

Section 25. Section 72-16-301, MCA, is amended to read:

"72-16-301. Taxable transfers generally -- contemplation of death. (1) A tax shall be and is hereby imposed upon any transfer of property, real, personal, or mixed, or any interest therein or income therefrom in trust or otherwise to any person, association, or corporation in the following cases, except as hereinafter provided in this

section:

~~(1)~~(a) when the transfer is by will or by intestate laws of this state from any person dying possessed of the property while a resident of the state;

~~(2)~~(b) when a transfer is by will or intestate law of property within the state or within its jurisdiction and the decedent was a nonresident of the state at the time of his death; or

~~(3)~~(c) when the transfer is of property made by a resident or by a nonresident when such nonresident's property is within the state or within its jurisdiction by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor or intended to take effect in possession or enjoyment at or after such death. Every

(2) No transfer ~~by deed, grant, bargain, sale, or gift made within 3 years prior to the~~ before the 3-year period ending on the date of the decedent's death ~~of the grantor, vendor, or donor of a material part of his estate or in the nature of a final disposition or distribution thereof and without a fair consideration in money or money's worth shall, unless shown to the contrary,~~ be deemed considered to have been made in contemplation of death~~, within the meaning of this section, but no such transfer by deed, grant, bargain, sale, or gift made before such~~

(3) Every transfer during the 3-year period ~~shall be treated as having been made in contemplation of death. However, nothing herein contained shall be deemed to have modified, amended, or repealed the provisions of 72-16-306,~~ ending on the date of the decedent's death must be considered to have been made in contemplation of death, except:

(a) no transfer shown to be a bona fide sale for an adequate and full consideration in money or money's worth may be considered to be a gift made in contemplation of death;

(b) if the transfer was a gift to a donee made during the calendar year and if the decedent was not required by section 6019 of the internal revenue code to file any gift tax return for the year with respect to the donee, the transfer may not be considered to be a gift made in contemplation of death.

(4) Subsection (3)(B) does not apply to any transfer with respect to a life insurance policy."

Section 26. Section 72-16-302, MCA, is amended to read:

"72-16-302. Transfer under power of appointment. ~~Whenever any person or corporation shall exercise a~~ (1) To the extent of any property with respect to which the decedent has at the time of his death a general power of

appointment ~~derived from any disposition of property made either before or after March 5, 1923, such appointment when made~~ property shall be deemed considered to have been transferred in a transfer taxable under the provisions of parts 1 through 8, ~~in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will. Whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of parts 1 through 8 shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.~~ whether or not the decedent exercised the power of appointment.

(2) The term "general power of appointment" means a power that is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate, except that a power to consume, invade, or appropriate property for the benefit of the decedent which is limited by

an ascertainable standard relating to the health, education, support, or maintenance of the decedent may not be considered a general power of appointment."

Section 27. Section 72-16-303, MCA, is amended to read:

"72-16-303. Joint estates -- transfer by right of survivorship taxable. (1) Whenever any property, ~~--however acquired,---real---or---personal,--tangible--or--intangible, including--government--bonds--of--the--United---States,~~ is ~~inscribed--in-co-ownership-form,~~ held by two or more persons in joint tenancy ~~or--as--tenants--by--the--entirety,--or--is deposited-in-any-bank-or-other-depositary-in-the-joint-names of--two--or--more--persons--and--payable--to-the-survivor-or survivors-of-them-upon-the-death-of-one-of-them~~ with right of survivorship, the right of the survivor or survivors to the immediate possession or ownership is a taxable transfer.

~~(2) The tax is upon--the--transfer--of---decedent's interest,-one-half-or-other-proper-fraction,-as-evidenced-by the--written--instrument--creating--the--same,-as-though-the property-to-which-the-transfer-relates-belonged-to-the-joint tenants,-tenants-by-the-entirety,-joint-depositors,--holders in--co-ownership--form,-or-persons,-as-tenants-in-common-and had--been,--for--inheritance--tax--purposes,--bequeathed--or devised--to--the--survivor-or-survivors-by-will,-except-such part-thereof-as-may-be-shown-to-have-originally-belonged--to the-survivor-and-never-to-have-belonged-to-the-decedent-when the--surviving--joint--tenant--is--a--spouse-or-issue-of-the decedent,--in--all--other--cases,--the--full--value--of--the property--shall--be-taxable,-except-the-portion-thereof-that originally-belonged-to-the-survivor--and--as--to--which--the decedent--had-made-no-contribution,-if-the-decedent-had-made a-contribution-to-the-ownership-of-the-property,-the--amount of-the-contribution-shall-be-taxable.~~

~~(3)--This--section--shall-not-be-construed-to-repeal-or modify-the-provisions-of-72-16-301(3),~~ on the full value of the property held as joint tenants with right of survivorship, except a part of the property as may be shown to have originally belonged to the survivor or survivors and never to have been received or acquired by the latter from the decedent for less than adequate and full consideration in money or money's worth. When the property or any part of the property, or part of the consideration with which the property was acquired, is shown to have been at any time acquired by the other person from the decedent for less than an adequate and full consideration in money or money's worth, only the part of the value of the property as is proportionate to the consideration furnished by the other person may be excepted. When any property has been acquired by gift, bequest, devise, or inheritance as joint tenants with right of survivorship and their interests are not

otherwise specified or fixed by law, the tax is on the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants with right of survivorship."

Section 28. Section 72-16-906, MCA, is amended to read:

"72-16-906. Required filings. The personal representative of the estate of any decedent whose estate is subject to the payment of a United States estate tax shall file ~~duplicates~~ a duplicate of the United States estate tax ~~returns~~ return with the ~~district--court-of-the-county-in which-such-estate-is-being-probated-and-with-the~~ department of revenue. He shall also file ~~with-such-court-and~~ with the department a certificate or other evidence from the internal revenue service showing the amount of the United States estate tax as computed by ~~that-agency~~ the internal revenue service."

SECTION 29. SECTION 72-26-502, MCA, IS AMENDED TO READ:

"72-26-502. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who has attained the age of ~~18~~ 21 years.

(2) "Benefit plan" means an employer's plan for the

benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(5) "Court" means district court.

(6) "Custodial property" means:

(a) any interest in property transferred to a custodian under this chapter; and

(b) the income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under 72-26-603 or a successor or substitute custodian designated under 72-26-801.

(8) "Financial institution" means a bank, trust company, savings institution, or credit union chartered and supervised under state or federal law.

(9) "Legal representative" means an individual's personal representative or conservator.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister,

uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of ~~18~~ 21 years.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) "Transfer" means a transaction that creates custodial property under 72-26-603.

(16) "Transferor" means a person who makes a transfer under this chapter.

(17) "Trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers."

NEW SECTION. **Section 30.** **Requirement that beneficiary survive insured by 120 hours.** A beneficiary in a policy of life or accident insurance who does not survive the insured by 120 hours is treated as if he had predeceased the insured

unless the policy of insurance contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster or requiring that the beneficiary survive the insured for a stated period in order to receive the proceeds of the policy.

NEW SECTION. **Section 31.** Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 32.** Codification instruction. [Section ~~29~~ 30] is intended to be codified as an integral part of Title 33, chapter 20, and the provisions of Title 33, chapter 20, apply to [section ~~29~~ 30].

-End-